



In the Matter of:

**ADMINISTRATOR, WAGE AND
AND HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR,**

ARB CASE NO. 99-106

ALJ CASE NOS. 99-CLA-2

PLAINTIFF

DATE: October 29, 1999

v.

ALBERTSON'S, INC.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

REMAND ORDER

This case arose when the Administrator of the Wage and Hour Division, U.S. Department of Labor, assessed civil money penalties against Albertson's, Inc. for violations of the child labor provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C.A. §216 (1998). Albertson's requested the Administrator to produce statements prepared or adopted by the 24 persons the Administrator identified as potential witnesses. When the Administrator declined, Albertson's filed a Motion to Compel production of the statements. In an order dated May 14, 1999, the Administrative Law Judge (ALJ) ruled that the informer's privilege did not bar production of the unredacted statements and handwritten questionnaires given by the 24 potential witnesses. In a decision on reconsideration issued June 10, 1999, the ALJ concluded that, because the 24 potential witnesses who might testify about the alleged child labor violations had been identified, there was no further reason to protect the potential witnesses' written statements. Order Denying Administrator's Motion for Reconsideration.

The Deputy Administrator of the Wage and Hour Division petitioned the Administrative Review Board (ARB) for interlocutory review of the ALJ's orders pursuant to 29 C.F.R. §580.13. On October 7, 1999, the ARB received the Deputy Administrator's Motion for Remand. The Deputy Administrator asserts that the parties have negotiated a settlement and have submitted their Consent Findings and Agreement and a proposed Order to the ALJ. However the Deputy Administrator notes that because he has filed an interlocutory appeal of the ALJ's discovery orders, the ALJ "lacks jurisdiction" to rule upon the Consent Findings and

Agreement. Deputy Administrator’s Motion for Remand at 1. Accordingly, the Deputy Administrator requests that we remand the case to the ALJ for “completion of the administrative process and issuance of an appropriate Order.” *Id.* at 2.

We agree that the ALJ lacks authority to consider the parties’ Consent Findings and Agreement while the case is pending before the ARB. Therefore, we **GRANT** the Deputy Administrator’s motion and **REMAND** the case to the ALJ to consider the parties’ consent Findings and Agreement.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member